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6 *Pro Hac Vice Motion Forthcoming*

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20 **UNITED STATES DISTRICT COURT**
21 **CENTRAL DISTRICT OF CALIFORNIA**

22 **JASON LEOPOLD, BUZZFEED INC.,)`**

CASE NO.:

23 **Plaintiffs,**

**COMPLAINT FOR
DECLARATORY AND**

25 **v.**

INJUNCTIVE RELIEF

26 **FBI,**

UNDER THE

FREEDOM OF

INFORMATION ACT

27 **Defendant.**

5 USC § 552

INTRODUCTION

1. Plaintiffs JASON LEOPOLD and BUZZFEED INC. file this Freedom of Information Act suit to force Defendant FBI to conduct a proper search for records related to deceased media figure Andrew Breitbart. To date, FBI has performed only a cursory and legally inadequate search and has produced no records.

PARTIES

2. Plaintiff JASON LEOPOLD is a journalist who lives in Beverley Hills, CA, and works in Los Angeles, CA. LEOPOLD submitted the FOIA request at issue in this case.

3. Plaintiff BUZZFEED INC. is a media organization with its principal place of business in New York, NY, and offices in Los Angeles, CA, and elsewhere. BUZZFEED shares a legal interest in the request and in any responsive records that are produced.

4. Defendant FBI is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

5. This case is brought under 5 U.S.C. § 552(a)(6)(c)(i) and presents a federal question conferring jurisdiction on this Court.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B) because Plaintiff LEOPOLD resides in this District.

THE FOIA REQUEST AND FBI'S INADEQUATE SEARCH

7. On approximately August 7, 2012, LEOPOLD requested from FBI under FOIA all records related to Andrew Breitbart.

8. On September 4, 2012, FBI responded to the request. The response stated that FBI searched only its "main file records" and claimed that no records were located. A true and correct copy of FBI's response is attached as Exhibit A.

COMPLAINT

1 9. LEOPOLD appealed the FBI's response.

2 10. On April 15, 2013, U.S. Department of Justice Office of Information
3 Policy ("OIP") denied the appeal. OIP affirmed the FBI's refusal to conduct a
4 cross-reference search. A true and correct copy of OIP's appeal decision is
5 attached as Exhibit B.

6 11. In its appeal decision, OIP claimed that the FBI is not required to
7 perform cross-reference searches unless the requester provides "information
8 sufficient to enable the FBI to determine with certainty that any cross-references it
9 locates are identifiable to the subject of [the] request," including, for example, the
10 dates and locations of contacts between the subject of the request and the FBI, the
11 subject's social security number, or other such information.

12 12. Nothing in the FOIA statute requires a requester to provide this
13 information before a cross-reference search must be conducted.

14 13. As FBI and OIP are certainly aware, Andrew Breitbart was a well-
15 known public figure and is easily identifiable by the FBI in conducting a cross-
16 reference search.

17 14. As the FBI and OIP are also aware, cross-reference searches frequently
18 turn up records not located in main file searches. *See, e.g., Islamic Shura Council*
19 *of S. California v. F.B.I.*, 779 F. Supp. 2d 1114, 1118, 1126 (C.D. Cal. 2011)
20 (noting that FBI located additional records in post-litigation cross-reference search
21 and noting that FBI had "lied to the Court" about the existence of documents).

22 **COUNT I – VIOLATION OF FOIA**

23 15. The above paragraphs are incorporated herein.

24 16. Defendant FBI is an agency subject to FOIA.

25 17. LEOPOLD made a valid FOIA request to FBI.

26 18. BUZZFEED also has a legal interest in the request.

1 19. FBI has refused to conduct a reasonable search for records responsive
2 to the request.

3 **WHEREFORE**, Plaintiffs ask the Court to:

- 4 i. Order FBI to conduct a reasonable search for records, including a
5 cross-reference search, and to produce all non-exempt requested records;
6 ii. Award Plaintiffs attorney fees and costs; and
7 iii. Enter any other relief the Court deems appropriate.
8

9 DATED: April 7, 2017

10 Respectfully Submitted,

11 LAW OFFICE OF RACHEL
12 STEINBACK

13 /s/ Rachel Steinback

14 Attorneys for Plaintiffs

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